Supreme Court, U.S.
FILED

NO. 96 301 MAY 9 1996

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In the Supreme Court of the United States

OCTOBER TERM, 1996

DWAYNE PETERS,
Petitioner

vs.

STATE OF LOUISIANA,
Respondent

On Petition for a Writ of Certiorari
to the Supreme Court of the State of Louisiana

PETITION FOR A WRIT OF CERTIORARI

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66 pp

QUESTION PRESENTED

DOES BROAD APPLICATION OF INEVITABLE DISCOVERY DOCTRINE EXCEPTION TO THE EXCLUSIONARY RULE VIOLATE FOURTH AMENDMENT PROTECTION AGAINST UNREASONABLE SEARCH AND SEIZURE?

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IN THE
SUPREME COURT OF THE UNITED STATES

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STATE OF LOUISIANA,
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On Petition for a Writ of Certiorari
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PETITION FOR A WRIT OF CERTIORARI

The petitioner Dwayne Peters respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Louisiana, which on petitioner's application for supervisory writs denied certiorari, effectively affirming the Louisiana Courts of Appeal for the Fourth Circuit's reversal of the ruling suppressing evidence by the Judge of Criminal District Court for the Parish of Orleans, Section "H."

OPINIONS BELOW

The denial of certiorari by the Louisiana Supreme Court appears as Appendix A. The opinion of the Louisiana Courts of Appeal for the Fourth Circuit appears as Appendix B. The application for Certiorari to the Louisiana Supreme Court appears as Appendix C.

JURISDICTION

The Supreme Court of Louisiana denied certiorari on February 9, 1996. Jurisdiction of this Court is invoked under 28 U.S.C. sec.1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the Constitution of the United States provides:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourteenth Amendment to the Constitution of the United States provides, in pertinent part:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This case raises the important issue of whether the broad

application of the inevitable discovery doctrine exception to the exclusionary rule violates Fourth Amendment protections against unreasonable search and seizure. The Louisiana Supreme Court by denying certiorari effectively affirms decisions of the Louisiana Courts of Appeal which have broadly interpreted the inevitable discovery doctrine disregards this court's ruling in Nix v. Williams, 104 S.Ct. 2501, 2517 467 U.S. 431, (1984). This Court should grant a writ of certiorari to the Louisiana Supreme Court to resolve this issue.

A. Course of Proceedings and Disposition Below.

On July 14, 1995, the Trial Judge for Section "H" of the Criminal District Court for the Parish of Orleans ruled that cocaine seized after Petitioner's arrest was "fruit of the poisonous tree" and could not be used during Petitioner's trial. App. C. Pursuant to the District Attorney's application to the Louisiana Courts of Appeal for the Fourth Circuit for Supervisory Writs the appellate court reversed the ruling of the trial court on November 8, 1995. App. B. Application for a writ of Certiorari to the Louisiana Supreme Court for review of the Fourth Circuit's decision was denied. App. A. This petition is from the Louisiana Supreme Court's denial of Certiorari.

B. Statement of the Facts.

On Thursday, September 15, 1994, 3:45 p.m., narcotics detectives of the New Orleans Police Department allegedly set up surveillance of Dwayne Peters at 5490 Tullis Street, on the Westbank, pursuant to a comment from a concerned citizen. Mr. Peters allegedly entered his vehicle carrying a paper bag which was not recovered from

Mr. Peters' vehicle, nor is seen transferred to any person or place. During rush hour, Mr. Peters allegedly drove from his Tullis Street residence to the toll plaza, paid the dollar toll and proceeded across the Crescent City Connection to the Eastbank. Mr. Peters then allegedly turned around somewhere on the first exit and returned to the Westbank where he parked in some unnamed parking lot. After an undetermined period of time of being surveilled in the parking lot, Mr. Peters allegedly returned to the Westbank toll plaza, paid his dollar again, and proceeded across the Crescent City Connection, again during rush hour traffic. Although the police are familiar with the area, Officer Robertson cannot determine where petitioner stopped on the Westbank. See App. C Mtn. Transcript May 1, 1995 page 9.

Mr. Peters then allegedly appears somewhere on the 2500 block of Felicity Street. No time is noted. No identification or arrest is made. No paper bag is seen. No drugs are seen. Only an alleged transaction is noted.

Several miles away, through rush-hour choked streets, Mr. Peters next appears on Palm Street in the 8700 block. He exits his vehicle, approaches someone on a porch, has a conversation and allegedly a transaction occurs. No paper bag is seen. Mr. Peters gets back in his vehicle, drives to Monroe Street where he again exits his vehicle and walks up to a residence, confers with another male, and allegedly a transaction occurs. No paper bag is noticed. The male goes into the residence, comes out and gets into Mr. Peters' vehicle with Mr. Peters. They drive out of the area. Mr. Peters next appears at the corner

of Bienville and Carrollton where he is stopped and arrested. The time of the arrest was 4:30 p.m., September 15, 1994.

The detectives clearly state that this scenario took a mere 45 minutes from the beginning of the surveillance to the arrest. The trial court apparently doubted the veracity of the police testimony that such an extended route could be driven in such a short period of time. See App. C Mtn. Transcript July 14,1995, page 4-5.

Detective Eddie Selby testified that Dwayne Peters once advised of his rights in the midst of a narcotics investigation, gave an extremely convenient and gratuitous alleged statement about the location of other drugs. Contrary to Selby's testimony Detective Honore, Selby's partner, said he had not heard nor knew of any statements allegedly made by Mr. Peters. App. C Mtn. Transcript May 4,1995, page 4.

Selby then takes the arrestee's house keys and along with Detective Robertson, drives him from Carrollton and Bienville, through town, during rush hour, across the Crescent City Connection to the Westbank into the Tall Timbers area and enter Mr. Peters' house without a warrant or application being filed. App. C, Mtn. transcript May 1, 1995 page 14. Detective Robertson entered Mr. Peter's residence directly after the 4:30 P.M. arrest. Several hours after entering and securing the residence which was at least 9 miles as the crow flies from the arrest location, Detective Robertson finally applied for the search warrant. No testimony suggests that the police limited their initial entry or security search.

REASONS FOR GRANTING THE WRIT

THE LOUISANA APPELLATE COURTS OVERLY BROAD APPLICATION OF THE INEVITABLE DISCOVERY DOCTRINE CONFLICTS WITH DECISIONS BY LOWER FEDERAL COURTS AND STATE COURTS.

The factual background of this case presents the search first - warrant later- scenario noted by Justice Scalia in Murray v. United States, 487 U.S. 533, 101 L.Ed.2d 472,. 108 S.Ct 2529, 2540 Fn2(1988). "The dispute here is over the scope of this (the independent source) doctrine." Id.at 2533. Similarly, the Louisiana Courts of Appeal for the Fourth Circuit opinion stretches the inevitable discovery doctrine far beyond the reasoning in state or federal courts before and after Nix v. Williams.

The Louisiana Fourth Circuit appears to have adopted the "inevitable discovery doctrine" to justify the search first, warrant later situations. State v. Sterling, 641 So2d 696 (La. App. 4 Cir 1994) (without obtaining search warrant police enter apartment to retrieve bag of drugs, exigent circumstances alleged); State v. Pollard, 640 So2d 882 (La. App. 4 Cir 1994) (without obtaining search warrant police take arrested into his residence drugs seized pursuant to consent); State v. Irby, 632 So2d 801 (La. App. 4 Cir 1994) (while warrant being prepared police search house, discover drugs in shed in back of house, no consent); State v. Garner, 621 So2d 1203 (La. App. 4 Cir 1993) (In search and seizure of guns, no warrant ever issued but court found that it was assumable that the officers would get search

warrant and not just arrest warrant); State v. Knapper, 626 So2d 395 (La. App. 4 Cir 1993)(without obtaining search warrant police stop, arrest, relocate defendant to his residence, break in front door). Such broad use of the inevitable discovery doctrine approaches the level that mere probable cause is all that is required to avoid the exclusionary rule.

The Fourth Circuit's decision directly conflicts with lower federal courts holdings. See e.g. United States v. Griffin, 502 F.2d 959(6th Cir. 1974) cert.denied.

We hold that absent any of the narrowly limited exeptions to search warrant requirement, police who believe they have probable cause to search cannot enter a home without a warrant merely because they plan subsequently to get one. The assertion by police (after an illegal entry and after finding evidence of the crime) that the discovery was "inevitable" because they planned to get a search warrant and had sent an officer on such a mission, would as a practical matter be beyond judicial review. Any other view would tend in actual practice to emasculate the search warrant requirement of the Fourth Amendment. Id. at 961.

The facts of the present case are remarkably similar to those in Griffin. The Sixth Circuit's decision clearly conflicts with that of the Louisiana Fourth Circuit.

The Louisiana Fourth Circuit Court's reliance on Murray v. United States, 487 U.S. 533, 108 S.Ct. 2529, 101 L.Ed.2d 47 (1988) as basis to reverse the trial court's ruling is indicative of the Circuits'

obvious discomfort differentiating, defining and applying the "inevitable discovery doctrine" and the "independent source doctrine."

Murray, clearly develops the "independent source" doctrine not the "inevitable discovery doctrine" adopted in Nix v. Williams, 104 S.Ct. 2501, 2517 467 U.S. 431, (1984). In Murray, after stopping a marijuana laden van outside of a warehouse, drug agents broke into the warehouse without obtaining a warrant, observed marijuana bales in plain sight, resealed the premises and returned with a search warrant. The Supreme Court held that: "[s]o long as a later, lawful seizure is genuinely independent of an earlier, tainted one there is no reason why the independent source doctrine should not apply. The ultimate question, therefore, is whether the search pursuant to warrant was in fact a genuinely independent source of the information and tangible evidence." Murray v. United States, 487 U.S. 533, 108 S.Ct.at 2535-36.

Further, confusion in the wake of Murray v. United States regarding the Nix v. Williams apparent requirement of "demonstrated historical facts" created conflict at the federal and state level. In U.S. v. Lamas, 930 F.2d 1099, 1104(5th Cir. 1991) the Fifth Circuit noted that the second part of its test for the inevitable discovery doctrine detailed in United States v. Cherry, 759 F.2d 1196 (5th Cir.1985), cert.denied, which required that the government must establish, by a preponderance of the evidence, that the government was actively pursuing a substantial alternate line of investigation at the time of the constitutional violation was cast into doubt by footnote 2 of this Court's holding in Murray.

In United States v. Brown, 64 F.3d 1083, 1085(7thCir. 1995) the Seventh Circuit was presented with the argument that probable cause alone sufficiently created the basis for making a discovery inevitable. The Court argued that probable cause plus a chain of events that would have led to a warrant independent of the search is required for a finding of inevitability. Id. Otherwise the requirement of a warrant for a residential entry will never be enforced by the exclusionary rule. Id. The Court acknowleged attempts to erode the Fourth Amendment warrant requirements by allusion to an argument in United States v. Buchanan, 910 F.2d 1571 (7thCir. 1990) does not enlarge the inevitable discovery doctrine. Although the Court did not decide the case on inevitable discovery grounds they were obviously concerned by the District Court essentially permitting probable cause by itself to determine "inevitablity".

In his dissent in Nix, Justice Brennan defined the "inevitable discovery doctrine" by differentiating it from the "independent source doctrine" as follows:

> When properly applied, the "independent source" exception allows the prosecution to use evidence only if it was, in fact, obtained by fully lawful means. . . . The "inevitable discovery" exception is likewise compatible with the constitution, though it differs in one key respect from its next of kin: specifically, the evidence sought to be introduced at trial has not actually been obtained from an independent source, but rather would have been discovered as a matter of course if independent investigations were allowed to proceed.

Nix v. Williams, 104 S.Ct. 2501, 2517 467 U.S. 431, (1984).

Justice Stevens' in his concurrence clearly illustrates the issue.

> The majority refers to the "societal cost" of excluding probative evidence. In my view the more relevant cost is that imposed on society by police officers who decide to take procedural shortcuts instead of complying with the law. What is the consequence of the shortcut that Detective Leaming took when he decided to question Williams in this case and not to wait an hour or so until he arrived in Des Moines? The answer is years and years of unnecessary, but costly litigation. Instead of having a 1969 conviction affirmed in routine fashion, the case is still alive 15 years later. Thanks to Detective Leaming, the State of Iowa has expended vast sums of money and countless hours of professional labor in its' defense. That expenditure surely provides an adequate deterrent to similar violations; the responsibility for that expenditure lies not with the Constitution, but rather with the constable.

Id. at 2516.

Clearly, this Court's decision in Nix did not specifically define the outside limits of the inevitable discovery doctrine. The conflicts caused by confusion over the exceptions to the exclusionary rule leads to an ever deepening erosion of the Fourth Amendment right of a citizen to be secure in the privacy of their home.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment of the Louisiana Supreme Court.

Respectfully submitted,

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Attorneys for Petitioner

APPENDIX A

THE SUPREME COURT OF THE STATE OF LOUISIANA

STATE OF LOUISIANA

VS. No. 95-KK-2984

DWAYNE PETERS

FEB 12 1996

IN RE: Peters, Dwayne; - Defendant(s); Applying for Writ of Certiorari and/or Review, Supervisory and/or Remedial Writs; Parish of Orleans Criminal District Court for the Parish of Orleans Div. "H" Number 375-280; to the Court of Appeal, Fourth Circuit, Number 95KW-1636

February 9, 1996

Denied.

WFM

PFC

HTL

CDK

JPV

JOHNSON, J. would grant the writ.

Supreme Court of Louisiana
February 9, 1996

/s/ Illegible

Acting Clerk of Court
For the Court

APPENDIX B

STATE OF LOUISIANA	*	NO. 95-K-1636
VERSUS	*	COURT OF APPEAL
DWAYNE PETERS	*	FOURTH CIRCUIT
	*	STATE OF LOUISIANA

NOV 09 1995

* * * * * * *

IN RE: STATE OF LOUISIANA

APPLYING FOR: SUPERVISORY WRITS

DIRECTED TO: HONORABLE JAMES F. MCKAY, JUDGE CRIMINAL DISTRICT COURT, ORLEANS PARISH SECTION "H", C.D.C. #375-280

WRIT APPLICATION GRANTED

We grant relator's application for supervisory writs and reverse the trial court's judgment. The trial court suppressed evidence seized pursuant to a warrant because the officers entered the defendant's house prior to the issuance of the warrant. Although the officers' pre-warrant entry arguably lacked exigent circumstances, the affidavit supporting the warrant contained no evidence obtained as a result of the illegal entry. Because probable cause supported the search warrant and the evidence seized from the house would have been discovered inevitably, the evidence is admissible.

Murray v. U.S., 487 U.S. 533, 108 S.Ct. 2529, 101 L.Ed.2d 47 (1988).

New Orleans, Louisiana this 8th day of November 1995.

/s/ M L
JUDGE MOON LANDRIEU

/s/ P C C
JUDGE PHILIP C. CIACCIO

/s/ J B A
JUDGE JOAN BERNARD ARMSTRONG

NOV-8 1995

/s/ Illegible
COURT OF APPEAL FOURTH CIRCUIT

APPENDIX C

CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS STATE OF LOUISIANA

Case No.: _____ Item No.: I-25248-94

SEARCH WARRANT

ORDER OF SEARCH

TO: THE SUPERINTENDENT OF THE NEW ORLEANS DEPARTMENT OF POLICE and/or HIS DESIGNATED REPRESENTATIVES.

AFFIDAVIT(S) HAVING BEEN MADE BEFORE ME BY *Detective Jeffrey Robertson*

THAT he has good reason to believe that on or in the (premises) (person) (vehicle) located at *5490 Tullis Drive*

within the Parish of Orleans, State of Louisiana, as more fully described in the application for this warrant, there is now being concealed certain property, namely; *All contraband, controlled dangerous substances, more particularly Cocaine, along with any concomitant physical evidence, either substantive or trace, associated with its use, possession, packaging, and/or distribution.*

WHICH said property constitutes evidence of the com-

mission of a crime or offense against the laws of the State of Louisiana set forth in the Louisiana Revised Statutes, and as I am satisfied from the affidavit(s) submitted in support of the application for this warrant that there is probable cause to believe that the aforesaid grounds for the issuance search warrant exist;

YOU ARE HEREBY ORDERED to search forthwith the aforesaid (premises) (person) (vehicle) for the property specified, serving this search warrant and making the search, and if the property be found there, to seize it, leaving a copy of this warrant and a receipt for the property seized, to make your written return on this warrant including a written inventory of the property seized, and to bring the said seized property into the court (before the judge, the clerk, the sheriff, or any court officer who usually acts as the custodian) within ten days of this date as required by law.

YOU ARE (ARE-NOT) AUTHORIZED to execute this warrant and to make this search during the daytime or the nighttime and if the property herein described be found on the (premises) (person) (vehicle) herein described to seize said property in accordance with law.

YOU ARE (ARE-NOT) AUTHORIZED to execute this warrant and make this search on a Sunday and if the property herein described be found on the (premises) (person) (vehicle)
herein described to seize said property in accordance with law.

THIS WARRANT MADE IN DUPLICATE ORIGINAL, NEW ORLEANS, LOUISIANA, THIS 15th DAY OF September, 1994.

8:10 PM

/s/Illegible

JUDGE, SECTION (Illegible)
CRIMINAL DISTRICT COURT

COPIES:

Original:	Unit File
1st Copy:	Issuing Magistrate
2nd Copy:	Person Being Served
3rd Copy:	District Attorney
4th Copy:	Issuing Magistrate
	Upon making return

NOPD Form 117-A (rev. 7/73)

A-8

Item No.: I-25248-94

CRIMINAL DISTRICT COURT

PARISH OF ORLEANS

APPLICATION FOR SEARCH WARRANT

BEFORE ME, the undersigned Judge of the Criminal District Court, Parish of Orleans, State of Louisiana, personally came and appeared: *Det. Jeffrey Robertson*

employed by the New Orleans Department of Police, 715 South Broad Street, New Orleans, Louisiana.

WHO, after being duly sworn by me, deposed and said:

THAT a search warrant should be issued for the search of the following described (premises) (person) (vehicle) *5490 Tullis Drive*

Municipal Number: *5490*

Type of Occupancy: *Townhouse*

Structure: *Light blue woodframe siding*

Number of Stories: *two story*

Apartment Number: *N/A*

FOR the purpose of seizing the following described property:

All contraband controlled dangerous substances, more particularly Cocaine, along with any concomitant physical evidence, either substantive or trace, associated with its use, possession, packaging, and/or distribution.

The reasons and facts for the request of this search warrant are:

See continuation sheets...

APPLICATION FOR ORDER OF SEARCH FOR 5490 TULLIS STREET NEW ORLEANS, LOUISIANA

The facts and circumstances supportive of this request are as documented below:

I-25248-94

Within 72 hours inclusive of September 15th 1994 (as well as on previous ocassions), Narcotics and Drug Abuse Detective Jeffrey Robertson spoke with a confidential source concerning the retail distribution of Crack/Cocaine from 5490 Tullis and 8726 Palm Street. According to this source, a black male subject known by the name of "Dwayne Peters" was utilizing the aforementioned locations as retail outlets for Crack/Cocaine. The confidential source advised the Officers that Dwayne Peters lived at 5490 Tullis Street and kept the main supply of his contraband at that location. Dwayne Peters was said to supply a subject named "Juan" who lived at the 8726 Palm location. "Juan" was said to distribute to several smaller cocaine distributors in the uptown area. Dwayne Peters was said to utilize a blue cutless with which to conduct his illicit activity.

Detective Robertson had also received this same information from other sources concerning the illicit activities of Mr. Peters. Based on the information received the Detectives initiated an investigation into the activities of Dwayne Peters.

During the course of their investigation the Officers set up a surveillance on the location of 5490 Tullis Street. At approximately 3:45pm on September 15th 1994, they obseved

a subject later identified as Dwayne Peters exit from the location and proceed to enter a 1989 Blue Cutless La. Lic# BUU 254. The subject appeared to be carrying a small brown paper bag as he entered his evhicle. He then drove out of the location and proceeded across the Mississippi River Bridge. He drove very eraticaly as he proceeded across the bridge. He was constantly changing lanes, speeding up and slowing down and looking through his rear view mirror giving the Officers the impression that he was checking to see if he were being followed. After getting all the way across the river, he got off on the first exit and headed back across the bridge to the westbank (still driving eratically and checking his mirrors). He got back across to the Westbank and parked in a parking lot. He just set there observing the passing vehicles. It was apparent that he was looking to see if he were being followed. Apparently satisfied he got back onto the Bridge and headed back across the river (to the eastbank).

Mr. Peters went to the area of the 2500 block of felicity where he parked. he reached under the seat and removed an object. He then exited from his vehicle and met with a subject who was at that location. This subject was a black male about 38 years of age clad in a green t-shirt. The two subjects conversed briefly. The unknown subject was then observed to hand Mr. Peters an undetermined amount of US Currency. Mr. Peters counted the money and placed it back into his pocket. He then handed a small object to the unidentified male subject. This subject accepted the object. Mr. Peters then drove out of the area.

Mr. Peters then proceeded to the area of the 8700 block of Palm Street. He pulled in front of 8726 Palm Street and exited from his vehicle. He knocked on the door and was met

by a subject later identified as Juan Crockett. After a brief conversation on the porch, Mr. Crockett went inside his residence and came back out momentarily. He then counted out an undetermined amount of US currency which he gave to Mr. Peters. Mr. Peters counted the currency and then placed it in his pocket. He then handed a small object to Mr. Crockett. Mr. Crockett then went into his residence and Mr. Peters drove away.

Mr. Peters then drove to 3621 Monroe Street where he met with a subject later identified as Derrick Youngblood. Mr. Youngblood was waiting outside 3621 Monroe Street. He walked up to the parked vehicle of Mr. Peters and they engaged in a brief conversation. Mr. Youngblood was then handed a small object by Mr. Peters. Mr. Peters was then handed US currency by Mr. Youngblood. Mr. Youngblood then walked back into his residence at 3621 Monroe Street. He stayed for only seconds and then walked-back outside and entered the vehicle of Mr. Peters. Mr. Peters and Mr. Youngblood then drove out of the area.

APPLICATION FOR ORDER OF SEARCH FOR 3621 MONROE STREET CONTINUED:

I-25248-94

Based on the information received, the actions of the aforementioned involved parties, the observations of the investigating Officers during the course of their investigation, it was the opinion of the investigators that Dwayne Peters was making narcotics transactions. The Detectives decided

that they had probable cause to make an investigatory stop of the vehicle driven by Dwayne Peters and to detain the subject in order to acquire an Order of Search for his residence. This stop was made at Bienville and Carrollton. During the course of this stop Marijuana was located in the vehicle of Dwayne Peters as well as U.S. currency which was alerted on by a Narcotics K-9 Detector Dog. Derrick Youngblood was in the vehicle with Mr. Peters. After being placed under arrest and advised of his Miranda rights Dwayne Peters was informed that the Officers were in the process of obtaining a search warrant for his residence. At this point Mr. Peters became very cooperative and stated that he had several quarter ounces of cocaine as well as some currency at his residence on Tullis Street. The location was ultimately secured until the obtaining of the Order of Search.

Mr. Youngblood (3621 Monroe), the passenger of the vehicle remained adamant in his contention that he knew nothing about 3621 Monroe Street (even though the investigators observed him make a transaction with Mr. Peters from that location). Based on these observations and the actions of the involved parties it was also the belief of the investigators that illegal contraband was also being stored at that location.

While the vehicle driven by Mr. Peters was being stopped, Juan Crockett was observed to leave his residence at 8726 Palm Street. The Officers had continued their surveillance on this location. He was observed to meet with a subject at Eagle and Edinburgh where an apparent transaction took place. Money was given to Mr. Crockett and he gave a small object to the other subject in return. While watching this transaction it became apparent that Mr. Crockett

had observed the investigating Officers watching him and he bagan to walk hurriedly away. At this point he was detained and a bag of Cocaine was found on his person. Based on his actions with Mr. Peters, and the observations of the investigators it was their belief that Mr. Crockett was also storing illicit contraband at his residence 8726 Palm Street.

Predicated on the information received and corroborated through the surveillance of the investigators (as is described above), it is the belief of the Detectives that Cocaine is being secreted within and distributed from 8726 Palm Street, 5490 Tullis Street, and 3621 Monroe Street. It is respectfully requested that an Order of Search be made issue for the aforementioned.

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 15th DAY OF
SEPTEMBER 1994
NEW ORLEANS, LOUISIANA

/s/ Illegible	/s/ Illegible
MAGISTRATE COMMISSIONER	Affiant

M5

8:10pm

APPENDIX D

STATE OF LOUISIANA	CRIMINAL DISTRICT COURT
VS.	PARISH OF ORLEANS
DWAYNE PETERS	NO. 375-280, SECTION H

PRELIMINARY HEARING AND HEARING ON MOTION TO SUPPRESS EVIDENCE AND MOTION TO SUPPRESS STATEMENT HELD ON MAY 1, 1995, BEFORE THE HONORABLE JAMES F. MCKAY, III, JUDGE PRESIDING.

PRESENT:

JAY QUINLAN, ESQ.,

ASSISTANT DISTRICT ATTORNEY, FOR THE STATE:

FRANK LARRE, ESQ.,

COUNSEL FOR DEFENDANT.

REPORTED BY: PATRICIA CHAMPAGNE, C.S.R.

DETECTIVE JEFFREY ROBERTSON.

CALLED AS A WITNESS BY THE STATE, AFTER HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

EXAMINATION BY MR. QUINLAN:

Q State your name for the record, please.

A My name is Jeffrey Robertson. I'm a New Orleans Police officer, assigned to the Narcotics Division.

Q Were you assigned in that capacity back on September 15th of last year?

A Yes, I was.

Q At that time, did you have the occasion to participate in the investigation of one Dwayne Peters?

A Yes, I did.

Q Do you see that individual in the courtroom today?

A He's the gentleman sitting before the bar with the olive colored suit on.

BY MR. QUINLAN:

Please let the record reflect that the detective has identified the defendant before the bar.

EXAMINATION RESUMED BY MR. QUINLAN:

Q Detective, if you would, please relate to the Court the facts that led to ultimately the arrest of Dwayne Peters for possession of over twenty-eight grams of cocaine, plus possession of a handgun while at the same time being in possesssion of marijuana.

A Yes, I received information from a confidential source. The information stated that Dwayne Peters, living at 5490 Tullis Street, that he was delivering cocaine to several locations in the uptown area, in particular supplying a subject named Juan at 8726 Palm Street.

Q Did you ultimately set up a surveillance of Mr. Peters?

A Yes, I did.

Q Where did that begin?

A It began on Tullis.

Q And what happened?

A We set up a surveillance of Mr. Peters. As part of the information I received originally, he was supposed to be utilizing, I think, a blue Cutlass to make his deliveries. He was observed leaving his residence with a small bag and getting into the Cutlass.

Q Where is Tullis Street?

A Tullis is on the westbank. At this time, he began to head

towards New Orleans to the eastbank. As he went across the bridge, he drove very erratically. He made numerous lane changes. He was constantly peering out of the window. He was stopping or slowing down. He went across the river. He got to the first exit, he got back on the bridge and went back across the river to where he came from.

Q What happened then?

A There's a little parking lot area. He just sat there, just kind of sat there and started looking around. So it was obvious to us he was looking to see if he was being followed. After a little while, I guess he was apparently satisfied. He went back across the river again to the east bank, again driving very erratically, checking his mirror and so forth. He proceeded to the twenty-five hundred block of Felicity Street. At this time, he exited from his vehicle and met with a subject there. The subject was standing outside, waiting, it looked like. At this time, we observed what appeared to be a transaction. Mr. Peters was observed to accept money from the subject, at which time he handed him a small object. Mr. Peters got back into his vehicle and drove off.

Q The unit that you were in, was that the only unit that was following Mr. Peters?

A No, sir, I had numerous other units, officers in the area, numerous people.

Q Were you in radio contact with one another?

A We had radio contacts. We were mostly driving unmarked vehicles and attired in plain clothes.

Q Where did Mr. Peters go after that first stop on Felicity?

A From there he went to the location on Palm Street. He went to the location on Palm Street. He knocked on the door. He was met by a subject who was later identified as, I think, Juan Crockett. Again, a small exchange took place. A brief exchange took place. Mr. Peters proceeded to drive out the area. Shortly thereafter, Mr. Crockett was observed to leave the residence. And he was eventually detained and found to be in possession of cocaine.

Q Did you follow Mr. Peters after he arrived at the location on Palm Street?

A No, sir, I did not. I had other units that did follow him from that point. I pretty much stayed on Palm Street at that time.

Q Did you ultimately apply for a search warrant for the location on Tullis Drive?

A Yes, I did.

Q I show you what I'm marking for motion purposes as State's Exhibit I and ask you if you can identify what is contained in that?

A This is the application for search, along with the actually order of search for 8726 Palm and 5490 Tullis.

Q And did you present that application to a magistrate?

A Yes, I did.

Q I show you what I'm marking for identification State's Exhibit 2 and ask you if you can identify that?

A This is the actual order of search for 5490 Tullis.

Q And who is that signed by?

A Signed by, I believe it's Judge Giarrusso.

Q Was it signed in your presence?

A Yes, it was.

Q This warrant was ultimately executed on Tullis Drive?

A Yes, it was.

Q Were you present during the execution of that warrant?

A Well, what happened was after he left the address on Palm Street, he went to a location on Monroe Street. Another transaction was observed, what appeared to be a transaction. He left the residence with the subject in his vehicle. At this time, an investigatory stop was made of that vehicle.

Q Were you present during the —

A No, I was not. Sergeant Eddie Selby actually conducted that stop, along with some other narcotics officers.

Q And you did not actually fill out the return on the search warrant for Tullis Drive. Is that correct?

A No.

BY MR. QUINLAN:

Judge, at this time, the State would tender.

CROSS EXAMINATION

EXAMINATION BY MR. LARRE:

Q Now, officer, you have never known Dwayne Peters or known of Dwayne Peters before that weekend. Is that correct?

A I've heard of his name before from several other sources. As far as actually knowing him, no, I didn't.

Q You've never had him under surveillance before, had you?

A Not per se. I knew where he lived at. I knew what he drove. I heard from other sources that he was supposed to be in the game, as we call it, involved in narcotics trade.

Q How long did you know he was in the game?

A I heard it, you know, for the past five, six months or so, off and on from several sources.

Q And when you had people or you knew of people who saw him and you knew what kind of car he had and all, you had never seen him in a narcotics transaction before one of those times, had you?

A This is the only particular occasion we actually conducted a surveillance and began to follow him.

Q Now, you said that you had a confidential informant tell you about him?

A Yes, I did.

Q Now, was that an informant that you had arrested in the past?

BY MR. QUINLAN:

Objection, Judge.

BY THE COURT:

You have an objection?

BY MR. QUINLAN:

Yes, sir. As to whether he ever arrested the confidential informant.

BY THE COURT:

What was your question?

BY MR. LARRE:

Had he ever arrested the confidential informant. I'm trying to determine the veracity of the informant.

BY MR. QUINLAN:

The basis of the search warrant, Judge, is all — I mean

the location is initiated by the information derived from a confidential informant —

BY THE COURT:

He's certainly entitled to ask certain questions directed to the confidential informant. Was he under pay? Did he ever secure arrests and convictions in the past? Now, you're asking me one that I never knew of. Had you ever arrested the confidential informant before? Is that correct?

BY MR. LARRE:

Well, the next logical source was were you giving him something on that arrest for giving you this information, i.e. was he being paid, if not money.

BY THE COURT:

See, but my job is not for me to help you find out who the C.I. is. I'm only here to determine whether or not the C.I. is reliable. So I'm going to overrule that objection. Excuse me. I'm going to sustain that objection.

EXAMINATION RESUMED BY MR. LARRE:

Q Does your confidential C.I. have a criminal record.

BY MR. QUINLAN:

Same objection, Judge.

BY MR. LARRE:

Any convictions.

BY MR. QUINLAN:

Same objection.

BY THE COURT:

Sustained.

BY MR. LARRE:

Note my exception.

BY THE COURT:

Let it be noted.

EXAMINATION RESUMED BY MR. LARRE:

Q Did you compensate this C.I. in any fashion?

A I didn't hear you. Excuse me.

Q Did you pay him?

A No, he was not paid.

Q Did you promise not to prosecute him for something if he gave you this information?

A No, I did not.

BY THE COURT:

Well, was this for good government?

A This was a concerned citizen.

BY THE COURT:

A concerned citizen. Okay.

EXAMINATION RESUMED BY MR. LARRE:

Q And you had information —

A The warrant stated "a confidential source." The basis of the warrant was a confidential source. To answer your question, it was not —

BAY THE COURT:

So it was more of a concerned citizen that a confidential informant?

A Correct. It was a concerned source, what I stated.

EXAMINATION RESUMED BY MR. LARRE:

Q Now, how long were you on this surveillance before you attempted to get the search warrant?

A Oh, it was numerous hours because I had to do three search warrants. So once it was signed, it was like 8:00 o'clock at night or in the area, 8:15 or something like that.

Q How long were you following Mr. Peters around?

A I would say like, you know, forty-five minutes, something like that. I don't know exactly. The times are all in the report. I don't remember the exact time he was stopped. It's reflected in the report. I remember I started aroung 3:00 o'clock or so and then about 8:00 o'clock or so is when I got the warrant signed. He was detained after we left the Monroe Street location. Once he left the Monroe Street location, the vehicle was stopped. At this point, he was detained and placed under arrest for some marijuana found in the car. At that point, he was taken back across the river to Tullis Street. And the Tullis Street location was secured while I did all the paperwork.

Q All right. Well, what I'm asking you where did you first start surveilling him from?

A When he left his residence.

Q On Tullis?

A On Tullis, correct.

Q And you say in your report and in your request for a search warrant that he drove across the bridge once or twice and was looking to see if he was being followed?

A He drove across the bridge once.

Q Once?

A And then sat in the parking lot area for a little while and then drove right back across again to the eastbank.

Q Was that a Winn Dixie parking lot?

A I don't recall. I really don't think it was.

Q Did he get out of his vehicle and go make a purchase while he was in that parking lot?

A No, he sat in the car.

BY MR. QUINLAN:

Objection.

BY THE COURT:

Overruled.

EXAMINATION RESUMED BY MR. LARRE:

Q He did not?

A No.

Q And he went across the bridge and back and sat in the parking lot. Then he went back across the river. Is that correct?

A That's correct.

Q And what did he do next?

A When he went back across the river?

Q Yes.

A He went to the twenty-five hundred block of Felicity Street. And to be honest with you, the reason it's so strange because there's a police station, the Sixth District Station, located in that block. So we were kind of surprised of him going right there. He went down to the corner and looked further down. He met with a subject who was standing outside an apartment.

Q And you didn't arrest that subject?

A No, we did not.

Q And you don't know who he was or what he got, if anything, from Mr. Peters?

A No, sir. At that point, it was early in the investigation. We took no enforcement actions.

Q And then you went from Felicity Street to where?

A He went to Palm Street.

Q Palm Street?

A Right. I think it's 8726.

Q Did he go into the residence on Palm Street?

A He knocked on the door on Palm Street. And a subject came outside. And they spoke briefly. At this time, we again saw what appeared to be a transaction take place. Money was exchanged. The subject was given a small object. At that point, he got back into his car and drove to Monroe Street.

Q And you apprehended that subject on Palm Stsreet. Is that correct?

A We did later, not right then.

Q Did you find any cocaine on him?

A Yes, we did.

Q Did he tell you it came from Mr. Peters?

A We did not ask where it came from.

BY THE COURT:

Where's the return?

BY MR. QUINLAN:

That's coming in in a minute, Judge. Another detective did the return.

EXAMINATION RESUMED BY MR. LARRE:

Q And then he went from Palm Street to where?

A He went to Monroe Street. I forget the exact address. I think thirty — I forgot the exact address.

Q And Monroe Street is on the eastbank as well?

A Yes, it is. It's all in the same area, a couple of block radius.

Q And then you apprehended that subject as well, Mr. Youngblood?

A Mr. Youngblood, after he got in the vehicle with him, they drove out the area. And when they were apprehended, they were together, yes.

Q Okay. And when Mr. Youngblood was in the car and he was apprehended, did he have narcotics on his person?

A I did not make the actual stop. But the officers that did arrest him, they found marijuana and a gun in the car.

Q Marijuana?

A Yes, sir.

Q No coaine?

A No.

Q And all of this took place in about forty-five minutes?

A It was in that time frame basically, yes.

BY THE COURT:

Where did you find the cocaine?

A The cocaine was found actually on Tullis. Once the warrant was signed, we went back to Tullis.

BY THE COURT:

That's the seven clear plastic bags?

A That was the seven quarter ounces, yes, sir. That was the

original location where we saw him coming from.

BY THE COURT:

Seven quarter ounces?

A Seven quarter ounces.

BY THE COURT:

Okay. And was the gun found there also?

A No, sir. The gun was — well, there was a gun found in the vehicle. I don't know if he had another one at the location or not. I didn't execute the warrant.

BY THE COURT:

And he was driving the vehicle?

A He was driving the vehicle, yes. The vehicle was stopped —

BY MR. QUINLAN:

The officer who stopped the vehicle will testify.

BY THE COURT:

All right.

EXAMINATION RESUMED BY MR. LARRE:

Q Now, the vehicle was stopped. The gun was found — was

it found in Mr. Peters' possession or was it just found in the vehicle?

BY MR. QUINLAN:

I'm going to object, Judge. This officer wasn't present at the time the vehicle was stopped and the gun was found.

BY THE COURT:

He's going to have another witness.

BY MR. LARRE:

Okay. That's fine.

EXAMINATION RESUMED BY MR. LARRE:

Q And you don't know where the contraband was found either. Is that correct?

A No, like I say, I wasn't present during the vehicle stop.

Q Were you present when the search warrant was executed?

A What happened was, as I said before, he was placed under arrests for the marijuana. And he was taken back across the river to Tullis Street. The residence was then secured. At this point, I left. And I drove back to do the paperwork. There were three search warrants involved so it took a couple of hours.

Q How was the residence secured? Did you go into the

residence to secure it?

A Yes –

BY MR. QUINLAN:

Judge, I object at this time only if Detective Robertson was there at the time the residence was secured.

BY THE COURT:

What are you doing? You're objecting to what?

BY MR. QUINLAN:

It calls for speculation unless a foundation is laid that Detective Robertson was there at the Tullis Street address when it was secured.

BY MR. LARRE:

I'll rephrase the question.

EXAMINATION RESUMED BY R. LARRE:

Q Officer, you have been working on this cases for a long time. Is that correct?

A For a long time?

Q Well, since the arrests. You know all about the case –

A I know pretty much about the case, yes.

Q When the residence was secured by your fellow officers, is it your understanding that they went into the residence prior to you arriving with the search warrant?

A Yes, the residence was secured before the search warrant was applied. Mr. Peters was escorted back to the residence. He was actually brought inside the residence. And once it was found nobody was in there, they sat around and basically waited on me to get the paperwork together.

Q How long did they basically sit around inside of Mr. Peters' — Now, officer, when your brother officers went into the house without the search warrant to secure it, did Mr. Peters give them any permission to go inside of his home?

A No, sir. When he was arrested over on Carrollton and the vehicle was taken down, he was advised he was under arrest for the marijuana. At this time, they advised him they were in the process — he was the target of a narcotics investigation and they were also going to obtain a search warrant for his residence. At this time, based on the fact that numerous persons had saw his arrest, as well as arrest of the other subject, and also the fact that another location was involved on Palm Street and that subject had been arrested a block away from his house, we were afraid that due to the time frame that any contraband inside the residence could be destroyed if anyone else was there. So at this time, he was relocated back over there. His key was used to enter the residence. They entered the residence with him. Once it was determined nobody else was inside, like I said, they just basically sat around and waited for me to get the search warrant.

Q When they entered his residence without the search war-

rant, did he say, "Here's my key. You're welcome to go in"?) Or did you take it from him and enter?

BY MR. QUINLAN:

Objection, Judge, only if Detective Robertson was there, first of all, to find out how the key was obtained.

BY MR. LARRE:

Well, he knew he went in with the key. I'm asking if he had permission to have the key.

BY THE COURT:

Do you know if somebody had permission to have the key?

A No, he was placed under arrest. I guess they took his keys probably out of his vehicle when the car was taken and probably moved to the side or whatever was done with it. And they probably had taken the keys then.

EXAMINATION RESUMED BY MR. LARRE:

Q Did at anytime prior to coming with the search warrant he give anybody permission to search his house or to enter his house, to the best of your knowledge?

A Again, I had left. But not to the best of my knowledge, no.

BY MR. LARRE:

I have no further questions of this witness.

BY MR. QUINLAN:

Nothing further, Judge.

BY THE COURT:

Step down.

BY MR. QUINLAN:

The State will call Detective Eddie Selby.

DETECTIVE EDDIE SELBY.

CALLED AS A WITNESS BY THE STATE, AFTER HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

EXAMINATION BY MR. QUINLAN:

Q Sergeant, if you would please state your name and assignment for the record, please?

A My name is Eddie Selby. I'm employed with the New Orleans Police Department?

Q Were you assigned to the Narcotics Section back on September 15th, 1994?

A Yes, I was.

Q Did you participate in the investigation and later the arrest of Dwayne Peters?

A Yes, I did.

Q Would you elucidate for the Court the facts that led to the detention and later arrest of Dwayne Peters?

A Based on investigation being conducted by Detective Jeff Robertson, Mr. Peters, seated at the bar with his attorney, was observed leaving the Tullis Street location in possession of something that Detective Robertson had observed through his surveillance. The vehicle had been followed to various locations in the city of New Orleans. After making it's last stop, Detective Robertson requested that the vehicle be stopped. It was so successfully stopped at Bienville and Carrollton Avenue. At the time of the Stop, Mr. Peters was the driver of the vehicle which was passengered by another subject. We ordered both subjects to get out of the vehicle. We identified ourselves as police officers. And at this time, we informed them that we were conducting a narcotics investigation. It was at that time that they were advised of the investigation involving their constitutional rights. During that time, some marijuana was found inside the vehicle. It was recovered by Detective Kevin Honore.

Q Do you know where that marijuana was?

A It was in the front of the vehicle. I don't know if it was on the console. I'm not sure. I remember him going in and he said, "I found it." He came out and it was the marijuana. At this time, both subjects were then advised that they were now under arrest. Once being placed under arrest and readvised of their constitutional rights, a more thorough search

of the vehicle was conducted, at which time a loaded nine millimeter automatic was found underneath the driver's seat of the defendant. At that time, I informed the defendant that it was our intention to serve a search warrant at the Tullis Street location. The defendant had already been advised of his constitutional rights. And at that time, he voluntarily admitted that he did, in fact, have drugs at the location and some currency.

Q Who was present, first of all, when the vehicle stop was conducted?

A Myself, Detective Kevin Honore and Detective — he's not in narcotics — I drew a blank. I haven't been gone that long. Reggie Jacque. And the statement about the drugs and that was also made in their presence.

Q And he was read his rights prior to making the statement?

A Yes.

Q Who read him his rights?

A I did.

Q From a form or from memory?

A Just from memory. At that time, due to the area where the gentlemen were stopped and due to the information that we had that the bulk of his contraband was being stored at the Tullis Street location, we elected to transport the defendant back to the location to secure the residence while Detective Robertson prepared the search warrant. We did so. We

took him back there.With his key, we got inside the house where we made sure there was no one else inside the residence. At that time, we sat with the defendant in his first floor which is a living room. Upstairs, there's a stairs which go into two bedrooms and a bathroom. Some time later on on that same day, we were contacted by Detective Robertson who informed us that the search warrant had been signed by the magistrate. At that time -- and I believe he accompanied me upstairs. We went to a middle drawer. And I say accompanied me, I'm not sure if he was with me or not. Went into his bedroom where he said the stuff was and there it was, a clear plastic bag containing seven smaller clear plastic bags and twenty-one hundred dollars in U.S. currency.

Q Did you ultimately prepare a return on the search warrant?

A Yes, sir.

Q I show you what I mark for motion purposes State's Exhibit 3 and ask you if you can identify that?

A Yes, this is my handwriting. It shows seven clear plastic bags, each containing a white powdered substance, and twenty-one hundred dollars in U.S. currency. Then it shows the denominations and one Motorola radio beeper.

Q All of those things contained on the search warrant were collected from the Tullis Street address?

A That is correct.

Q Was any currency found on the defendant at the time of the vehicle stop?

A Yes, at the time of the stop, he was in possession of, I believe it was, three hundred and forty-four dollars in U.S. currency.

Q The marijuana was obtained by Detective Honore, did he indicate whether that marijuana was in plain view or not that he seized inside the car?

A He didn't indicate to me. But I believe it was based on where I saw him go inside the vehicle. He wasn't searching under the front seat for anything. It was, I believe it was, a '79 — I can't remember what year or color. But I think it was right there by the front seat, if there's a console. But he went inside the vehicle as he got them out. I believe what he might have did, he might have observed it when he got the driver out of the vehicle because as we were getting him out, they came up right behind me. I was on the driver's side and I had Mr. Peters step out of his vehicle.

Q In between the time that you arrived at the Tullis Street address and were waiting on the arrival of the search warrant, did any search occur other than securing the residence?

A No.

Q Did the defendant make any other statement other than the one at the time the vehicle was stopped regarding the location of the narcotics in the residence?

A No.

BY MR. QUINLAN:

Judge, at this time, the State would tender.

CROSS EXAMINATION

EXAMINATION BY MR. LARRE:

Q Officer Selby, when did he make this gratuitous statement to you that he had narcotics at his home?

A When we informed him that we were going back to his residence with a search warrant.

Q You had already told him you were going to go to his residence and you had taken possession of his key. Is that correct?

A Had we already told him this?

Q Yes.

A First he was advised that he was under investigation. Then he was advised that he was under arrest. Once he was placed under arrest, I also informed him that it was our intention as part of this investigation to go to his residence to search that residence.

Q And when you told him it was your intention, you already had possession of his house key, taken out of his car.

A That's correct.

Q And you were going to his residence whether he told you he had narcotics there or not. Is that correct?

A Correct.

Q Now, when you told — let me ask you another question. When you told Mr. Peters that he had a right to remain silent, he understood those rights?

A I think Mr. Peters is an intelligent person and I think he definitely understood what we said to him.

Q Isn't it a fact, officer, that when you told Mr. Peters that he was under arrest, he told you, in fact, that I was his lawyer, that I had represented him before, and that he wanted to speak with me?

A He didn't tell me that. And if he had told me that, it still really wouldn't have meant anything in the investigation. We were prepared — he didn't have to make a statement. He made the statement. Whether he made that statement to me or not really wouldn't have meant anything because we were preparing a search warrant for his residence based on the previous actions displayed by him which were observed by other detectives. But to

APPENDIX E

STATE OF LOUISIANA	CRIMINAL DISTRICT COURT
VS.	PARISH OF ORLEANS
DWAYNE PETERS	NO. 375-280, SECTION H

ARGUMENTS OF COUNSEL AND RULING OF THE COURT ON MOTION TO SUPPRESS EVIDENCE HELD ON JULY 14, 1995, THE HONORABLE JAMES F. MCKAY, III, JUDGE PRESIDING.

PRESENT:

VAUGHAN CIMINI, ESQ.,

ASSISTANT DISTRICT ATTORNEY, FOR THE STATE:

FRANK LARRE, ESQ.,

COUNSEL FOR DEFENDANT.

REPORTED BY: PATRICIA CHAMPAGNE, C.S.R.

BY MR. LARRE:

Your honor, to refresh the Court's memory, Mr. Dwayne Peters left his home — they indicate that they had a totally anonymous caller that wasn't a reliable informer of any kind — and they chose to follow him around. And they say he made some evasive moves and so forth. But the ultimate was they stop him and they find absolutely no cocaine in his car. He's never been arrested for anything or he's not a felon. They did find a weapon in his car, which is not illegal, at which point they find some marijuana and a passenger in the car. They take the passenger and immediately bring him to the lockup. They take Mr. Peters from his automobile, drive to his home, go into his home and stay approximately four hours before they obtain a search warrant, at which time they say that the reason that they went into the house, the exigent circumstances, was that somebody might be in the house and could flush something down the toilet. The problem with that is, number one, Mr. Peters was arrested on the opposite side of the river from where he lives. He wasn't in close proximity where people might have seen and gone to his house. And they had him under surveillance. When he left the house, he was the only one in the house. They had no real reason to believe that anybody was in the house. And, in fact, there was no one else in the house. Then Officer Selbey tried to rehabilitate himself because he said my client voluntarily told him that there were drugs in the house and that's why he went in. But, see, that doesn't give him exigent circumstances anyway to go in without a warrant. An indication that that's not even a true statement, if at point Mr. Peters did give

this gratuitous statement, then obviously they should have asked him for a voluntary release to search, which they did not do. Mr. Peters told these people that he had an attorney. In fact, told them that he had me. And under cross examination, Officer Selbey admits that he was told that Mr. Peters had an attorney and that one of the officers — he doesn't remember which one — jokingly said, "Better get rid of that lawyer and hire Martin Regan." So they were on notice that the man was represented by an attorney. They had no right to be taking any statements from him. They not only do that, if Mr. Selbey is to be believed, they go into his house and wait four hours to get a search warrant. I submit that in State vs. Gant, which is a Louisiana Supreme Court case, which says they don't have a right to go into the house and wait for a search warrant. But, also, we would indicate, your honor, and argue that they had no probable cause to get the search warrant that they ultimately got. They have an unsubstantiated informant who says this man is dealing drugs. They surveil him. They think he is doing something wrong. They stop him. They search him. They find no drugs or cocaine. And he's not any place in close proximity to the house. There's no wording or anything in any of their testimony that says that the drug dealing was going to be in the house. They had no reason to take him from the scene where they arrested him to the house. They had no probable cause. They had no indication or nothing that gave them probable cause to even request a search warrant. So the argument is two-prong. Number one, they went into the home. They violated everything that the constitution says and went into his home without a search warrant. They stayed an inordinately long time before they got

the search warrant. But even when they got the search warrant, they didn't have probable cause to obtain it in any fashion. In light of those arguments, your honor, this evidence should be suppressed.

BY MR. CIMINI:

Your honor, the four corners of the warrant stand on their own. Judge Magistrate Commissioner Russo signed the warrant. That's independent evidence that there was probable cause.

BY THE COURT:

What time did he sign the warrant?

BY MR. CIMINI:

Pardon me?

BY THE COURT:

What time did he sign the warrant?

BY MR. CIMINI:

I would have to check the record to tell you what time he signed it. But that shows that there was probable cause for the warrant. In fact, if he did sign it, that's the best evidence that there was probable cause for the warrant.

BY THE COURT:

What got the warrant signed was the fact that he admitted, allegedly admitted, to police officers that he had narcotics in his house. That's what got the warrant signed, counselor.

BY MR. CIMINI:

It was after that, Judge, that the warrant was signed. And there is new case law saying that the police can detain or at least secure a household while they are getting a search warrant signed. In fact, that's exactly what they did here. They secured the residence.

BY THE COURT:

There is case law, counselor, that does allow on certain situations, call it exigent circumstances if you would like, which would allow a police officer to enter a house and secure it while a warrant is being secured. That's correct. Now tell me how the exigent circumstances were present that would allow an officer to do that, to go into a house without a warrant, while awaiting a warrant.

BY MR. CIMINI:

The exigent circumstances in this case, your honor, is —

BY THE COURT:

Talk loud, counselor. I can't hear you.

BY MR. CIMINI:

They had surveillance on Tulis Street, your honor. They observed the defendant leave Tulis Street. They observed the defendant engage in transactions after he left Tulis Street. Therefore, this is the warrant that they were originally going to get for the Tulis Street location. What they did was secure the Tulis Street location in the event that the search warrant would be signed, which in fact it was signed, at which time they went back to the address —

BY THE COURT:

Counselor, wasn't he arrested quite a ways from the Tulis Street apartments?

BY MR. CIMINI:

He was, your honor. And that's because —

BY THE COURT:

Wasn't it quite a ways?

BY MR. CIMINI:

It was on Felicity Street, your honor.

BY THE COURT:

Didn't the officers admit on the stand that they presumed that no one was home and did not the police

officers say on the stand, counselor, that when they approached the house that the house was completely dark, just as they left it when they were surveilling Peters when he left Tulis Street? Did they not say all of that?

BY MR. CIMINI:

Actually, your honor, I believe they said most of that. But they didn't say that they were sure no one was inside the house.

BY THE COURT:

Well, you see, that's the problem you have, counselor. And that's the problem that I have today. And I am not one who readily overturns motions — overturns evidence that would be submitted at the trial. I may have only allowed — granted — three motions, four motions, a year on this. But this pounds away at the Fourth Amendment of the Constitution of the United States, Mr. Cimini. It doesn't erode slowly. It, in my opinion, just blatantly goes right into its face. These officers knew that no one was home. These officers, in my opinion, had no fear that the neighbors would look at something irregular going on. When they returned to the home, the house was in the same darkened condition as it was when they left. And then, and then, to make it even worse, they spent four hours in the residence before Judge Russo signed the search warrant. Not only does that go right into the face of the Fourth Amendment, but it leaves one to believe that there may have been an appearance, an appearance, of impropriety, counselor. An appearance. Not an impropriety but an appearance

of impropriety which many, many jurists in this country feel the appearance is every bit as bad as the impropriety itself. And for those reasons, counselor, I am granting the motion to suppress the evidence.

BY MR. CIMINI:

Note the State's objection and intent to take a writ.

BY THE COURT:

You have two weeks, counselor, to take writs in this matter. Pick a date.

BY MR. CIMINI:

Your honor, will the state be allowed to obtain a record on this?

BY THE COURT:

Would the State be allowed to do what?

BY MR. CIMINI:

To obtain a record to submit their complete argument.

BY THE COURT:

I think it would be a waste of time, counselor. I've read your memorandum. I've read Mr. Larre's memorandum. Make your arguments to the Fourth Circuit.

BY MR. LARRE:

Your honor, I have no objection to the two weeks. But I indicate to the court that the transcripts have already been prepared in this matter. So there will be